IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 710 OF 2005

Mrs. Mamta Kalia .. Appellant

Vs.

Mr. Jaidev Kalia .. Respondent

Mr. Girish Badiger and Mr. Abhijit Sarwate for appellant.
Mr. D.S. Mhaispurkar with Ms. Vaidehi Mhaispurkar for Respondent.

CORAM: B.H. MARLAPALLE, J.

Date : October 03, 2005.

P.C.:

1. Heard the learned counsel for the respective parties. The appellant-wife filed an application before the Family Court in P.A. No.431 of 2001 claiming to be an application under Order XI and Order XII Rule 8 of the CPC seeking directions to produce the evidence as required under Section 66 of the Indian Evidence Act. The appellant-wife called for almost 14 documents and admittedly the photostat copy of the first document, namely, the agreement between the respondent-husband and one Mr. Madan signed on 13th March, 2000 was already placed on record by the

wife. This application placed before the Family Court was certainly for directions to produce 13 additional documents which were not filed by either of the parties along with the pleadings i.e. either the plaint or Written Statement and, therefore, this was surely an application under Order XI Rule 16, except the first document. The appellant thereafter filed an application marked as Exhibit 150 on 13//4/2005 stating that the earlier application was a notice to the respondent-husband and as he had failed to produced the documents, his defence be struck off and the petition for custody of the child filed by the husband be dismissed. The husband has filed his say to this application at Exh.155 and the say was marked as Exhibit 155. By the impugned order dated 19/4/2005 the application at Exh. 150 has been dismissed.

2. Admittedly, there was no order passed by the Family Court for production of additional documents and hence there is no question of striking off defence under Order XII Rule 21. This appeal cannot be entertained against the impugned order.

3. However, if the applicant-wife has filed a photostat copy of the agreement dated 13/4/2000, the husband shall produce the original of the same before the Family Court on the next date.

4. Save and except the above direction to produce the original agreement dated 13/4/2000, the appeal stands dismissed as not maintainable with liberty as is available in law.

(B.H. Marlapalle,J.)